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JUL 10 1991

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

National Exchange Carrier  
Association, Inc. Request for Rule  
Change Concerning the Composition  
of its Board of Directors )

AAD 91-28

RM-7736

ORIGINAL  
FILE

COMMENTS  
OF THE  
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits these comments on the Petition of the National Exchange Carrier Association (NECA) asking for a rulemaking on the composition of its board of directors. NECA seeks a rule change that would allow it to add two outside directors to its board who are not from the telephone industry, and a waiver to make it effective January 1, 1992. These directors would bring the size of the board to seventeen. The Petition went on public notice June 7, 1991.

The Commission requested separate comment on the NECA petition, differentiating the rulemaking from the waiver. For the same purposes set out in USTA's comments filed today in the rulemaking aspect of this proceeding, RM-7736, USTA supports the waiver requested by NECA. A copy of USTA's comments in RM-7736

is attached.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY Martin T. McCue

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Vice President and

General Counsel

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**I. NECA SHOULD BE AUTHORIZED TO TAKE THE SPECIFIC ACTION IT SEEKS TO TAKE.**

USTA has always supported the view that NECA should be able to control its own operations and governance, because outside intervention in the internal affairs of NECA typically has neither the interest of NECA or its members at heart. USTA has consistently supported board changes initiated by NECA since its organization in 1983. The NECA Petition, at note 4, lists the

many times that board change has occurred within NECA, all to better reflect the participatory interests of those for whom NECA is an agent.

NECA has made the decision that two persons not from the telephone industry should be included on its board of directors. This decision was made, according to NECA, to ensure public confidence in its processes and its overall management. NECA Petition at 3. While USTA perceives that there is no basis for any conclusion that NECA has improperly or unlawfully carried out its fiduciary duties and legal obligations to date, USTA supports NECA in its decision, and endorses a rulemaking that would confirm for NECA that it can take the specific action it intends.

The conditions suggested by NECA include one that an outside director have no business relationship or other interest that could interfere with the exercise of independent judgment as director. NECA Petition at 4. Such language is expressly included in the rule change proposed by NECA. Qualified candidates would be solicited from the business, professional finance and academic communities, including ex-governmental officials. NECA's initial external inquiries on this matter have been straightforward and open.

The conditions proposed by NECA are consistent with actions of many publicly-held corporations. NECA believes that, as in

the market at large, such action will bring additional skill and experience to its board. USTA believes that such action by NECA will be consistent with the fiduciary interest of NECA to the exchange carriers it represents.

**II. NECA'S PETITION IS CONSISTENT WITH EARLIER COMMISSION ANALYSIS AND CONCLUSIONS.**

The NECA proposal is carefully limited. NECA's specific request is consistent with a line of analysis prevailing at the Commission since 1983, when NECA was born. There, the Commission found specifically that, at that time, membership in NECA should be limited to exchange carriers, and that the governing board should be composed exclusively of exchange carrier representatives. Third Report and Order, MTS and WATS Market Structure, CC Docket No. 78-72, 93 FCC 2d 241, 335-36 (1983) at paragraph 345. The Commission's analysis there revolved around the inherent conflict of interest that might result if a Commission representative participated in NECA decisionmaking, or if, of equal significance, there were representatives of state commissions, interexchange carriers or consumers on NECA's governing board. Id. The Commission concluded that the Communications Act already provided the safeguards needed to protect the interests of these groups. Id.

The Petition, while it would change the exclusively LEC nature of the NECA board, also would avoid the real conflict of interest that would result if NECA's board were to include those

who possessed interests directly or indirectly at odds with those that NECA exists to serve. The clashing incentives of such antagonistic parties would affect the efficiency of NECA's operations, a result that would disserve both consumers and the public interest. This is not likely to occur under the framework of NECA's Petition. Thus, while there may be suggestions made in comments that certain adversary or other interests be provided with representation or automatic access to NECA's board, such suggestions should be rejected. Such alternatives would not provide any net benefit, and could cause harm to the public interest. The NECA Petition should be approved as proposed.

For the reasons set out above, USTA supports NECA's request.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY



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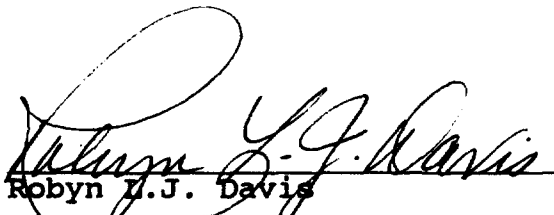
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**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on July 10, 1991 copies of the foregoing Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
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